

September 3, 2014

VIA U.S. MAIL AND ELECTRONIC MAIL

Mr. John H. Madigan
Water Resources Control Engineer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: *Lehigh Southwest Cement Company – Permanente Site*
Order No. R2-2014-0010 – Pond 9 & Presence of California Red-Legged Frog

Dear Mr. Madigan:

As you know, in March 2014, the individual NPDES Permit for the Permanente facility, operated by Lehigh Southwest Cement Company (“Lehigh”), was adopted by the Regional Water Quality Control Board, San Francisco Region, (“Regional Water Board”), and became effective May 1, 2014. *See* NPDES Permit at Regional Water Board Order No. R2-2014-0010. Concurrently, the Regional Water Board adopted a Cease and Desist Order, Order No. R2-2014-0011, which specifies actions to be taken to ensure compliance with the underlying NPDES Permit’s terms.

The NPDES Permit includes requirements for discharges from Pond 9 to Permanente Creek (noted as Discharge Point 003 in the NPDES Permit), including final effluent limitations set forth in Table 5. The Fact Sheet supporting the NPDES Permit describes the discharges from Pond 9 as “filtered and pH adjusted, if necessary,” consistent with terms included in a Consent Decree between Lehigh and the Sierra Club. *See* NPDES Permit at Fact Sheet page F-5; Consent Decree, U.S. District Court, Northern District of California, Case No. 5:11-cv-06392-HRL at paragraph 24 (“No later than September 30, 2013, and continuing no later than September 30, 2017, Defendants shall have installed and commenced operation of treatment facilities at Pond 9, for the discharge of water from Pond 11, and compliance with the Regional Water Board’s discharge limits for pH, turbidity, and total suspended solids shall be attained and maintained.”). Treatment at Pond 9 consists of pumping water that resides in Pond 9 to and through sand and cartridge filters prior to discharge. Because of the treatment (*e.g.*, filtration) provided at Pond 9, compliance with final effluent limitations was presumed at the time of NPDES Permit issuance, and interim limitations were not included in the concurrently issued Cease and Desist Order for Discharge Point 003.

As you may also know, Lehigh is undertaking significant infrastructure improvements at the facility, as well as routine maintenance in anticipation of the 2014-2015 wet season. As part of this effort, Lehigh sought to work in and around Pond 9 recently; before commencing this work, Lehigh commissioned a preliminary reconnaissance-level survey for all biological constraints, including the federally threatened California Red-legged Frog (“CRLF”). On August 24, 2014, during this survey, Lehigh’s consultant identified the presence of one CRLF in Pond 9, in an area that was drier than usual given the lower level of Pond 9 at that time.¹ The observed species and the surrounding habitat were not disturbed, and no “take” occurred.

At that point, Lehigh took immediate steps to minimize discharge from Pond 9 and ensure protection of the observed CRLF, including the following actions:

- The pumps from Pond 9 to the filtration system and then to Permanente Creek were shut down; they are locked and the keys are strictly secured.
- The pump from Dinky Shed Pond to Pond 9 (OPW21) was shut down; the pump is locked, and again, access is strictly secured. The discharge line is being re-routed to Reclaim Tank A in the Cement Plant Reclaim System.
- The line from Reclaim Tank A in the Cement Plant Reclaim System to Pond 9 is capped.
- The Rock Plant wash down activities were stopped until further notice, to minimize process water generation.
- The pipeline from Pond 11 to Pond 4A will be ready this week; this will allow water sent from the Cement Plant Reclaim System to be filtered and discharged from Pond 4A, if needed (thus, the discharge that was previously filtered at Pond 9 will be filtered prior to discharge via Pond 4A).
- Straw waddles are being placed a safe distance away from Pond 9 to filter any incidental run-off from entering Pond 9

As of last week, and from this point forward until or unless authorized by the United States Fish & Wildlife Service and/or other relevant wildlife agencies, Lehigh will refrain from operating the pumps that force water in Pond 9 through the filtration system, so as to avoid any potential impact on the CRLF. Seepage water into pond 9, along with any storm water that falls into Pond 9, will be allowed to accumulate until it reaches the discharge culvert from Pond 9 to the creek,

¹ Pond 9 has been the subject of multiple earlier surveys, and no CRLF was detected. Lehigh presumes that the extremely dry drought conditions may be impacting migration patterns. Lehigh is in the process of performing additional reconnaissance-level surveys at the other facility ponds to ensure identification and/or protection of species such as the CRLF; if such species or species habitat are not identified at or in those ponds, Lehigh will take appropriate steps to discourage access, in conformance with applicable regulatory requirements.

at which point that accumulated water will passively discharge. Since August 24, 2014, Pond 9 has not discharged; however, as additional seepage and storm water flows reach Pond 9, passive discharge will be inevitable.

Given this new, unanticipated development, Lehigh would appreciate working with Regional Water Board staff to amend the Cease and Desist Order to provide for interim relief from the final effluent limitations applicable to Discharge Point 003 until a final solution is implemented (e.g., Lehigh is permitted to operate the pumps and filtration system with protective measures or Pond 9 is abandoned as a discharge point in favor of an alternative (existing) location or method of discharge). To that end, Lehigh requests a telephonic or in-person meeting to discuss the issues further at your earliest convenience, so as to implement the most sensible approach for passive discharges from Pond 9 in the near future, and during the upcoming wet season. Lehigh will be concurrently discussing this issue with the Sierra Club, though given the equivalent filtration for Pond 11 water before discharging via Pond 4A, as was required for discharge via Pond 9, Lehigh is optimistic that the parties can reach accord.

If you have any questions, or would like to discuss further, please do not hesitate to contact me or Greg Knapp at Lehigh.

Very truly yours,



Nicole E. Granquist

Cc: Dyan Whyte, Asst. Executive Officer, Regional Water Board
Bill Johnson, Regional Water Board
David Johnston, California Department of Fish & Wildlife
Joseph Terry, U.S. Fish & Wildlife Service
Greg Knapp, Director, Environmental, Region West, Lehigh